Supreme Court, U.S.
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In The
Supreme Court of the United States

David Aslani and Sheila Knubbe, Petitioners
v.
State Farm Mutual Automobile Insurance Company, a Foreign Corporation, Kevin Theodore Simon and Joseph Kirchmaier, Respondents

On Petition for Writ of Certiorari to the Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

David Aslani and Sheila Knubbe
P.O. Box 437
Sr. Clair Shores, Michigan 48080-0437
(313- 499-1844)

OUT OF FINANCIAL NECESSITY THE PETITIONERS HEREIN ARE COMPELLED TO PROCEED PRO SE.

QUESTION PRESENTED

Whether the Michigan Supreme Court did err in denying the Petitioners' substantive rights in its failing to right the various egregious wrongs against the Petitioners and failing to heavily sanction the unscrupulous counsel of record for their conspiring with one another to resort to, inter alia, various schemes of obstruction of justice, deceptions, fraud, perjury and/or misrepresentations of the germane issues of fact and law and/or the commission of malfeasance, nonfeasance and/or misfeasance against the Petitioners, resulting in the dismissal of their meritorious claims against all of the Respondents in light of the unlawful, racist and bigoted conducts and orders of the trial court that deceitfully and unlawfully had been persuaded by the unprincipled counsel of the Respondents to deny the Petitioners' rights to discovery and to eventually fraudulently dismiss their meritorious claims against all of the Respondents, and additionally, being persuaded by some of the unscrupulous attorneys in the case at bar, had permitted the Petitioners' private information, such as their social security numbers, to be placed in the court records, which are accessible to the members of the public, in order to maliciously make the Petitioners the victims of identity-theft crimes, while it knew that all of the unlawful orders of the trial court had been rubberstamped by a corrupt panel of the Michigan Court of Appeals, which itself permitted more violations of the law against the Petitioners, all in the breach of the procedural and substantive rights of the Petitioners under the Michigan Constitution and the Fifth Amendment, the Seventh Amendment, and the Fourteenth Amendment to the federal Constitution, and international treaties, principles and laws, including the Universal Declaration of the Human Rights, specifically

under the Preamble and Articles 1, 2, 5, 6, 7, and 17 of the said Declaration, and while even though the said court ordered the redaction of the Petitioners' social security numbers from the court records, by failing to redact all of their other confidential and private information from their court files and to sanction the Respondents and their unprincipled counsel for the said unlawful conducts that had caused the Petitioners further deterioration of their health, and thereby it had permitted the Petitioners to remain the victims of judicial torments by all of the Michigan lawless and rigged and racist and bigoted courts, and thereby the Michigan court of last resort under the disturbing attendant circumstances, akin to the lower courts, committed the dereliction of its judicial accountabilities, unbecoming any adjudicator who has a grain of common decency and judicial integrity and a modicum of deference for the guaranteed rights of the Petitioners as the citizens of this country, making a shameful mockery of this country's most deeply valued right, to wit, the "due process of law," and thereby an opportunity to be heard.

PARTIES TO THE PROCEEDING

The parties to this proceeding in the courts below are David Aslani in his individual capacity and Sheila Knubbe in her individual capacity, acting as the Petitioners pro se, and State Farm Mutual Automobile Insurance Company, a Foreign Corporation, Kevin Theodore Simon and Joseph Kirchmaier are Respondents that are being represented by their counsel.

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(1)

ORDERS AND OPINIONS BELOW

The Orders of the Michigan Supreme Court intentionally, recklessly and unconstitutionally have denied the Petitioners their meritorious application for leave to appeal, which had been filed properly and timely; no opinion has been issued by the said state court of last resort (**Appendices A, B, and C**).

There is an opinion and order issued by the United States District Court for the Eastern District of Michigan, Southern Division, and orders issued by the Michigan trial Court and an opinion and orders entered by the Michigan Court of Appeals. Due to the ill-health of the Petitioners, in particular, Aslani, the Petitioners have not attached all the orders of the lower courts hereto (**Appendix D**).[1]

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[1]As Dr. Glenn Minster has diagnosed, the Petitioner Aslani's injuries in the November 25, 2003, motor vehicle accident constituted his back injuries that urgently required surgery on March 5, 2010, to prevent the Petitioner Aslani from further and constant intolerable pain and looming paralysis; however, due to "many severe and life threatening" medical complications, he had to be hospitalized for the period of 47 days to go through not one, but three surgical operations: One was for his lumbar discectomy with decompression and fusion from L2-5, and the other two were for formation of multiple blood clots in his lung (requiring a surgical placement of an IVC filter) and for his flared-up cholecystitis (requiring the surgical removal of his gallbladder) To be sure, the list of the Plaintiff's health issues has been a lengthy one and includes the following: excruciating pain all over his body, if not his soul (such as his head, jaw, back and lower back, bilateral wrist, gum and left knee), breathing problems, drop of his oxygen level, the enlargement of his heart and the enlargement of his prostate (discovered for the first time in his life), pneumonia, formation of multiple blood clots in his lung, gastroparesis, vomiting, constipation, diarrhea, chills, fever, depression, nightmares, fatigue, infection (such as phlebitis), indigestion, anemia, insomnia, post-traumatic stress disorder, lack of balance, extreme fluctuation

JURISDICTION

The Order sought to be reviewed is that of the Michigan Supreme Court in the case entitled ***David Aslani and Sheila Knubbe v. State Farm Mutual Automobile Insurance Company, a Foreign Corporation, Kevin Theodore Simon and Joseph Kirchmaier, Respondents*** under Docket No. 139788.

The said order was entered on April 27, 2010, by the Michigan Supreme Court (**Appendix B**).

On July 23, 2010, in its granting the Petitioners their application for an extension of time to file a *Petition for Writ of Certiorari*, this Court extended the time to September 24, 2010. Therefore, the jurisdiction of this Court had been invoked pursuant to Title 28, U.S.C. § 1257(3), as the issue raised herein is that of the Petitioners by the federal Constitution.

CONSTITUTIONAL PROVISIONS AND TREATIES INVOLVED HERE

AMENDMENT V to the United States Constitution is set forth in **APPENDIX E.**

AMENDMENT VII to the United States Constitution is set forth in **APPENDIX F.**

AMENDMENT XIV to the United States Constitution

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of his blood pressure, onset of diabetes due to his being administered with steroids to treat his back inflammation, night sweats, flared-up cholecystitis, problem with his eyesight, and hoarseness of his voice. Many of these ill-health conditions are still lingering on in a dangerous manner, including the blood clots in his lung and paralysis of his stomach and intestine. Moreover, the health of the Petitioner Knubbe, who cares for and nurses her spouse 24/7, has dramatically deteriorated.

is set forth in **APPENDIX G.**

UNIVERSAL DECLARATION OF HUMAN RIGHTS, of which the United States has been a signatory, and its **Preamble** and **Articles 1, 2, 5, 6, 7, and 17 of the said Declaration** are set forth in **APPENDIX H.**

STATEMENT OF THE CASE[2]

The instant case concerns a November 25, 2003, motor vehicle accident, in which both of the Petitioners sustained injuries.[3] They timely brought an action in the Michigan Wayne County Circuit Court, before Judge Susan D. Borman, against their insurance carrier, the State Farm Mutual Automobile Insurance Company (hereinafter, "State Farm"), as to their no-fault personal injury protection (PIP) benefits and also against the Respondent Kevin Theodore Simon (hereinafter, "Simon"), the driver at fault, and the Respondent Joseph Kirchmaier, that the Petitioners were misled by the State Farm into believing that he had been the owner/lessee of the vehicle, a 2001 Saab, causing their accident, as to their noneconomic losses, arising out of their injuries sustained in their said accident. It was

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[2] There are 16 Transcripts relative to the Petitioners' instant appeal. In the interest of clarity in this brief, they identify each transcript that they have made reference to as follows: "Tr." followed by date and page number/s.

[3] On May 13, 2004, the corrupt State Farm initially hired the services of some agents to rough-shadow and/or to shadow both of the Petitioners; on Friday, May 7, 2004, in the morning while the Petitioner Knubbe was driving, an agent of the State Farm whilst driving a van engaging in rough-shadowing, cut in front of her vehicle a number of times at the same time as it was in motion, causing almost a collision with her vehicle and thereby endangering her life (**Appendix I**).

through the State Farm that the Petitioners' prior attorneys had been advised of the identity and place of the residence of the lessee and the at-fault driver. However, at the eleventh hour in those proceedings the Petitioners to their utmost surprise discovered that the State Farm wantonly and flagrantly had misled them and their attorneys as to the identity and place of residence of the lessee of the 2001 Saab and the residence of Simon. [4]

On September 16, 2005, the Petitioners' then attorneys, Mr. Thomas Herrmann (P14902) and his law firm, Sarvis, Herrmann, and Misovski, P.C., advised the trial court of various unlawful conducts committed by the State Farm, through its attorneys, particularly Mr. Nathan J. Edmonds (P51453) and Mr. Michael J. Jolet (P67464), and their law firm, Secrest Wardle, of the following:

> . . . repeatedly, unprofessionally, wantonly, offensively, fraudulently and maliciously has resorted to falsehoods, misrepresentations of the pertinent issues of fact, distortion and falsification of documentary records, among other outrageous violations, against the Plaintiffs and additionally and egregiously has made scurrilous allegations against

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[4] Within the Petitioners' 2004 lawsuit, in response to the request for discovery from the State Farm, as to the name, identity and residence of the owner/lessee of the vehicle causing the accident, made by Mr. Herrmann, the State Farm, through its attorney, Mr. Jolet, in a letter dated May 4, 2005, **confirmed that Joseph Kirchmaier had been the person who had insured the 2001 Saab**, the vehicle that had caused the accident, causing them to sustain certain serious injuries, many of which to this date have not been cured (**Appendix D**).

> them to even malign their impeachable characters in its attempt to deceive this Court to prejudice and/or to deny their established rights.

Under the said grounds the Petitioners' said prior attorneys made a request from the trial court for heavy sanctions against the State Farm and its unscrupulous attorneys.[5]

The State Farm and its said attorneys, knowing that they had committed the said nefarious and unlawful conducts, never countered any of them nor filed any response.[6] **Rather than entering a judgment by Default as a sanction against the State Farm for its various fraudulent deceptions and wantonly flagrant denial of the Petitioners' rights to discovery under MCR 2.313(B)(2), among other sanctions, against it and its unprofessional attorneys, the trial court simply dismissed the Petitioners' 2004 lawsuit, without prejudice, in their favor, while knowing that the State Farm, by**

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[5] Mr. Herrmann and his law firm requested the following from the trial court:

> heavy sanctions against both the Defendant [State Farm] and its highly unprofessional attorneys for their creating a web of deceit against the Plaintiffs as part of the Defendant's scheme of scorched-earth policy and character assassination to harry, harass and insult them and to delay and deny their irrefutable rights against it.

[6] It is of note that at the September 8, 2005, hearing, when the trial court made her bench ruling for the said dismissal, Mr. Edmonds, whose conducts borderline on crimes, and who had been acting as a unscrupulous and pit-bull attorney all along, was literally imploring the Petitioners' attorney to go along with such a dismissal; he certainly folded like a soaking wet cardboard suitcase on a rainy Saturday night!

its lead attorney, Mr. Edmonds, had deceptively assured the Petitioners, through Mr. Herrmann, that it would settle their claims against it out of court. It instead, however, resorted to various deceptions, including perpetrating fraud on the tribunal, case evaluator, mediator, the Petitioners' attorneys, and themselves, while denying them their rights to discovery.

Once the Petitioners reinstituted their claims, through Mr. Elias Muawad (P41632) and his law firm, Muawad & Muawad, the State Farm from the get-go with chutzpah resorted to various falsehoods and deceptions and continued its conspiratorial and fraudulent schemes against the Petitioners, and once again denied the Petitioners' rights to the pertinent key information and material documentary evidence relative to the identity and residence of the lessee of the vehicle and its at-fault driver, Simon.

Certainly, the State Farm knew full well that the Petitioners had meritorious claims against it and the other two Co-Respondents; it also knew full well that at the end when the truth was thrashed out instead of trashed out, it, by itself, must be ultimately accountable for making the Petitioners whole concerning all of their meritorious claims against all the Respondents, be it their PIP benefits or their noneconomic losses. Therefore, it acted, inter alia, in bad faith and resorted to various concealments and deceptions and bald-faced lies, commission of fraud, suborned perjury, and obstruction of justice, to intentionally mislead the Petitioners to deny them any access to the pertinent key information and the necessary documentary evidence that it had in its possession, custody or control. [7]

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[7] Due to the restriction in place on using only 9000 words in this petition, the Petitioners have been materially prejudicially

Soon after the Petitioners reinstituted their claims through Mr. Muawad, to once more delay and deny the Petitioners' rights to discovery for oppressive and vexatious reasons and to perpetrate fraud on them, the State Farm, through its lead attorney, knowingly untimely raised the jurisdictional issue to wantonly unlawfully drag on this case for months in the United States District Court, where the case was assigned to Judge David M. Lawson.

On November 8, 2006, the State Farm removed this case to the said federal court, **on the basis of diversity jurisdiction, which was fabricated by Mr. Edmonds, falsely asserting** that Joseph Kirchmaier, causing the accident, had been the owner/lessee of the vehicle had been **a citizen of Ohio and not Michigan and Simon had been a citizen of Florida and not Michigan.**

Moreover, in the said federal court, the State Farm committed suborn perjury as it through a perjurious affidavit of Mr. Edmonds, dated November 6, 2006, in support of the Notice of Filing Petition for Removal, falsely claimed that the removal notice had been timely and that the owner/lessee of the vehicle had been Joseph Kirchmaier and that he had been a resident of Ohio. In the caption of its Petition for Removal, the State Farm named Simon and Joseph Kirchmaier as the "Defendants" and in the body of the said petition he untruly claimed that "Defendant Simon, on information and belief, is a citizen of the State of Florida, Defendant

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restrained from presenting a number of paramount significant issues of fact and law herein relative to various egregious violations of their substantive rights that fraudulently have occasioned in all of the pertinent Michigan state courts in the case at bar, causing them constant judicial torments.

Kirchmaier, on information and belief, is a citizen of the State of Ohio."

On February 9, 2007, Mr. Muawad—unbeknownst to the Petitioners—brought a second lawsuit in the same Michigan Circuit Court against Joseph Kirchmaier and Simon; the case was assigned to Judge Michael J. Callahan.

On March 8, 2007, Judge Lawson properly denied the State Farm's change of venue because of dilatory filing, **while Mr. Muawad failed to advise him that the State Farm through Mr. Edmonds had perpetrated fraud on that court by falsely claiming that the Respondents Simon and Joseph Kirchmaier had been citizens of Florida and Ohio, respectively, and not Michigan, nor did he advise Judge Lawson that the State Farm's assertion that Joseph Kirchmaier had been the owner/lessee of the vehicle involved in the November 25, 2003, accident had been deceitful, and thereby the State Farm and its attorneys under Fed.R.Civ.P. 11(b)(1) should have been heavily sanctioned for, inter alia, an "improper purpose."**[8]

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[8] In addition, on June 7, 2007, the State Farm by both Messrs. Edmonds and Jolet filed a motion for partial summary disposition in the trial court in which Joseph Kirchmaier had been identified as the owner of the 2001 Saab. However, on/or about October 19, 2007, when the Petitioners, acting pro se, unexpectedly and to their utmost surprise discovered a letter, dated, April 29, 2005—that had been provided to them **inadvertently** by the State Farm's new attorney, Brandy L. Kuretich (P61505)—authored by Ms. Tara H. Bratton (P42730) in response to Mr. Herrmann's request for discovery, advising him that "**the other vehicle** [the 2001 Saab] **involved in the accident was leased by James C. Kirchmaier**, 29607 Gleneagles Rd, Perrysburg, Ohio 43551, and **insured by an Ohio State Farm policy**, 35-W973-763" (emphasis added).

Thus, the Petitioners came to the appalling realization that the State Farm, through its attorneys, all along for thirty-one months (in actuality forty-seven months, if counting from November 25, 2003), deceitfully had been hoodwinking them by denying them their rights to discovery, and thereby denied them their rights to the pertinent material documentary evidence and key information relative to their claims against it, particularly those relevant to the true identity and residence of Joseph Kirchmaier and Simon in collusion with them and their counsel and the condition of the vehicle, causing the accident.[9]

About five weeks subsequent to October 19, 2007, to wit, on November 26, 2007, at the eleventh hour, the attorneys for Joseph Kirchmaier, Mr. Michael P. Daniels (P35009) and his law firm, Romain, Kuck & Egerer, P.C., in support of their client, Joseph Kirchmaier for his summary-disposition motion attached an affidavit of James Kirchmaier in which he had claimed that he had been the lessee of the 2001 Saab, and that he all along had been a resident of **Michigan**; hence one can conclude that the State Farm through Mr. Edmonds: (A) all along had been deceiving the Petitioners into believing that **Joseph Kirchmaier had been the lessee of the 2001 Saab**; (B) committed suborn perjury in the federal district court, as Mr. Edmonds' affidavit made in support of its petition for removal had been deceitful; (C) perpetrated fraud upon the federal district

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[9] In fact, the attorney for Simon, Mr. Berschback, specifically advised the Petitioners that all of the attorneys in this case had been involved in a "scheme of fraud" against them; however, he had not participated in such scheme. Nonetheless, he intentionally failed his professional duty to bring such a fraudulent scheme to the attention of any court or any other authorities.

court; (D) perpetrated fraud upon the trial court, with the aid of other attorneys, by claiming that Joseph Kirchmaier had been the owner of the 2001 Saab; (E) repeatedly commited fraud against the Petitioners along with other attorneys, such as Mr. Jolet, Ms. Bratton, Ms. Kuretich, among its other agents; and (F) through various fraudulent schemes and in collusion with its other attorneys and their law firm and the Co-Respondents and their counsel flagrantly willfully denied the Petitioners' rights to discovery, particularly in breach of three orders issued by the trial court, and in so doing it obstructed justice against the Petitioners, and repeatedly harassed them and delayed and denied them their legitimate rights, and inflicted untold pain and suffering upon them, and caused them unnecessary mental anxiety and hardship, and eventually unlawfully and deceitfully denied them their meritorious claims against it and the Co-Respondents.

The trial court entered its March 7, 2008, order, dismissing the Petitioners' claims against the State Farm in contravention of the mandates of MCR 2.313 and MCR 2.504(B)(3), Michigan Constitution, the Fifth, the Seventh and the Fourteenth Amendments (**Appendices E, F and G**), state and federal precedents including their rights under privacy. This dismissal was not based upon "adjudication on the merits," as the trial court out of her racism and bigotry engaged in prejudicially erroneous judicial construction of the clear and unambiguous meaning of MCR 2.313 in order to incorporate her unlawful oral instructions into its February 8, 2008, prejudicial written order—which were not reflected in that order—and thereby in actuality she dismissed the Petitioners' claims against the State Farm **only because they allegedly had violated her February 8, 2008, unintelligent oral instructions and not because they had violated her said**

written order, while the Petitioners had not been advised of her such intention either and were apprised of it only after the fact, and thereby under the attendant circumstances MCR 2.313 and MCR 2.504(B)(3) had been rendered inapplicable.

The trial court had issued its February 8, 2008, order in such an irrational rage and haste that it was handwritten and was printed out only later in the trial court's March 7, 2008, dismissal order.[10]

While citing the above order in its entirety in her March 7, 2008, dismissal order, the trial court deceptively prejudicially concluded that the Petitioners' "actions constitute[d] a clear violation of this Court's order," and thereby were in violation of MCR 2.313(B), and "therefore pursuant to MCR 2.504(B)(3), this action is dismissed with prejudice." However, her dishonest order borders on malevolent speciousness. First, the Petitioners never stipulated to the said prejudicial order—Mr. Muawad, whose deceitful services had been unconstitutionally coerced on them, did and that in conspiracy with other counsel of record; in fact, the Petitioners' Motion for Reconsideration in objections to the said order was denied; the racist trial court even had threatened them not to speak on the record at all; when

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[10] "IT IS HEREBY ORDERED:

Both Plaintiffs appear for their Depositions on Monday, Feb. 11, 2008- David Aslani- 9:00 am and Sheila Knubbe to immediately follow. **Dr. Policherla to sit for his Deposition** on Tuesday, Feb. 12, 08 at 3:00 pm. **Interrogatories to be limited to 25 questions per side no subparts with 12 point font.** All evidence by Plaintiff [**sic**: there are two Plaintiffs not one in this case] to be used at trial to be submitted to Defendants [**sic**: this order concerned only the State Farm and not any other Defendant in this case] by 2-15-08 at 12:00 pm. If any of this order is not complied with the case is to be dismissed" [emphasis added]. The Petitioners have provided a typed-up version of the said order, which had been made verbatim from its handwritten version.

they made any such attempt she hatefully insulted them by screaming at them to "shut up," and ominously warned them that she would kick them out of her courtroom; nevertheless, the Petitioners complied with her said order to the letter, and thereby despite their ill-health they made themselves available to be deposed on February 11, 2008—for their second depositions mind you. Mr. Muawad advised them that all they had to do concerning the said order was "to sit for their depositions" (Tr. 02/29/08, 16). Second, their treating physician, Dr. Polichera in compliance with the said order was also deposed on February 12, 2008—for his second deposition. Third, Mr. Muawad had advised the Petitioners that he had provided the State Farm with all of the evidence to be used at the trial by the Petitioners, while the State Farm had failed to provide them with its information and records for the same, in violation of their rights and even in breach of the trial court's orders. Fourth, the Petitioners prepared and served on the State Farm the required 25 questions; it, however, failed to serve its ordered 25 questions on them; **thus, it was the State Farm, and not the Petitioners, that breached the said trial court's order.**

While constructing the unambiguous and clear meaning of MCR 2.313, the trial court maliciously prejudicially and erroneously dismissed the Petitioners' meritorious claims against the State Farm only because they exercised their rights under the Fifth Amendment to avoid self-incrimination (Tr. 02/29/08, 13-14), relative to the Petitioner Aslani's being unlawfully repeatedly intimidated by Mr. Edmunds as to his unlawful arrest, after fraudulently being accused of being a "fucking Arab" and "a trespasser." In fact, an attorney representing the Petitioners objected to Mr. Edmunds' maliciously unlawful determination to bully the

Petitioners to answer any question concerning the events of that case, as theretofore it had been still pending; the Petitioners had already provided the State Farm with all of their medical records regarding that incident and had answered all the questions relative to injuries that the Petitioner Aslani had sustained in that incident.

Moreover, despite the objections of the attorney representing the Petitioners at their said deposition, Mr. Edmunds maliciously placed their private information, including their social security numbers, in the court records.[11] The trial court out of her, inter alia, spiteful bigotry and racism went along with the State Farm's unlawful conducts to place even the Petitioners' confidential information, such as their social security numbers in the court records, which are accessible by the members of the public, making them the victims of identity-theft crimes, which they became. It takes a dishonorable and lawless and racist judge to condone such a heinous violation.

It has been a well-established judicial principle that courts speak only "**through their judgments and orders, and not through their oral statements or written opinions.**" *People v. Stackpoole*, 144 Mich App 291, 298; 375 N.W.2d 419 (1985). *United States v. Eisner*, 329 F.2d 410, 412 (CA 6, 1964); *Schmidt v. Esquire, Inc.*, 210 F.2d 908, 914 (CA7, 1954); *United*

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[11] On March 20, 2008, the Petitioner Knubbe advised the chairman of the board and the chief executive officer of the State Farm, Edward B. Rust Jr., who holds a law degree (with Illinois State Bar No. 2425890), as to various unlawful and fraudulent conducts on the part of its agents and attorneys, against both of the Petitioners, including their commission of fraud, and intentionally placing their private information such as their social security numbers into the public records, but to no avail (**Appendix J**).

States v. Osten, 961 F.2d 1579, 1992 WL 92743 (CA 6, 1992); *United States v. Martin,* 913 F.2d 1172, 1175 (CA 6, 1990); *Goldman v. Commissioner of Internal Revenue,* 388 F.2d 476, 478 (CA 6, 1967); *United States v. Martinez,* 749 F.2d 623, 625 (CA 11, 1984).

Therefore, the trial court breached the judicial doctrine that had been set forth in the cited precedents above, as it dismissed the Petitioners' meritorious claims not because they had violated its concerned order, **which never speaks of answering any questions** asked by the State Farm in the course of its second protracted and punishing depositions, as the trial court **in its absurd oral instructions, which had not been even reflected in its said written order,** had stated that "And they can't ask questions. They are there to give answers. You're having a deposition. You ask the questions, they give the answers" (Tr. 02/08/08, 9). This oral statement not only has been quite unintelligent and bigoted—What if the Petitioners did not understand the State Farm's harassing and unlawful questions? Should they lose their meritorious claims because of their asking for the meaning of a question put to them?—but also has been in breach of the Petitioners' rights under the Fifth Amendment concerning the police incident; moreover, the trial court's oral instructions were paraphrased by her in her March 7, 2008, dismissal order as follows: "during the depositions, Petitioners were to answer questions and that they were not allowed to ask questions," **while there is not even one word about answering questions in her February 8, 2008, written order. Thus, she dishonestly resorted to deception.**

The racist trial court even unlawfully dismissed the Petitioner Knubbe's meritorious claims against the State Farm simply because she exercised her right

under the Fifth Amendment (**Appendix E**) and refused to deceitfully incriminate her spouse, by answering the same questions posed to the Petitioner Aslani, relative to his police incident (Tr. 02/29/08, 17), which again had nothing to do with the compliance with her said written order, as both of the Petitioners complied fully with it.

Throughout the six years of legal proceedings the Petitioners never committed any wrong or violated any court order, oral or written; thus, the dismissal of their meritorious claims has been too unlawful and exceptionally unjust. Incredibly, the dishonorable panel of the Michigan Court of Appeals that bigotedly had affirmed the racist trial court's dismissal order, readily acknowledged that "**This Court has recognized that a dismissal under MCR 2.504(B)(1) is a 'drastic sanction'**" (page 1 of **Appendix K**)(emphasis added); nonetheless, the panel out of entrenched animus towards the original nationality and religion of the Petitioner Aslani affirmed the fraudulent dismissal order of the indictable trial court, as it was without regard to truth, judicial or ethical consideration. Additionally, all the state courts prejudicially violated federal precedents that mandate that lesser sanctions must be explored before a **drastic one is applied**. *Titus v. Mercedes Benz of North America,* 695 F.2d 746 (CA 3, 1982); *Donnelly v. Johns-Manville Sales Corp,* 677 F.2d 339 (CA 3, 1982); *Rogers v. Kroger Co.*, 669 F.2d 317 (CA 5, 1982).

In its expounding on abuse of discretion, *Alken-Ziegler, Inc v. Waterbury Headers Corp,* 461 Mich. 219; 600 N.W.2d 638 (1999), at 228, opined as follows:

> It is of note that the Petitioners were entitled to a meaningful opportunity to be heard.*Greece v. WCI Holdings Corporation*, 136 F.3d 313 (CA 2, 1998); *Fromson v. Citiplate, Inc.*, 886 F.2d 1300 (CA 2, 1989);

Thomas E. Hoar. Inc. v. Sara Lee Corp., 882 F.2d 682 (CA 2, 1989).

However, as the trial court's Tr. 02/29/08, at pp 23-14 and 17, has established, when the Petitioners attempted to correct the lies being put on the record against them, fuming with rage she ordered them to shut up or be kicked out of her courtroom, making Petitioner Aslani so sick that he collapsed unconscious!

Undoubtedly **any unprejudiced person would render the dismissal order of the Petitioners' meritorious claims against the State Farm outrageously unlawful, as s/he will readily realize that the trial court prejudicially failed to take into her judicial consideration that:** (A) the State Farm, through its attorneys, committed perjury, suborned perjury, obstruction of justice and fraudulently conspired with other Respondents and Petitioners' own counsel against the Petitioners to deny them discovery, and had perpetrated fraud on the federal court, the trial court, case evaluator, facilitator and even the Michigan Court of Appeals; (B) the Petitioners were denied discovery, despite the fact that they brought numerous motions to compel discovery and three orders were entered against the State Farm; they even brought a motion for judgment by default against it; (C) the trial court failed to enforce her own three written orders and one oral order to compel discovery against the State Farm; (D) the trial court failed to grant the Petitioners' motion for default judgment against the State Farm; (E) the Petitioners provided the State Farm with multitudinous documents and pieces of information, including authorizing it to access all of their voluminous medical records; however, in return they were denied even a comma of discovery; (F) the **Petitioners were twice** subjected to lengthy, grueling, **harassing**, and **insulting depositions** and were

repeatedly and unlawfully bullied **to even violate their rights under the Fifth Amendment not to incriminate the Petitioner Aslani**; (G) the Petitioners' treating physician was also subjected to two lengthy and harassing depositions; (H) the Petitioners also were subjected to depositions by the State Farm's "medical expert," Dr. Yasmeen Ahmad, whose deceitful services had been bought to mimic the deceptive assertions fabricated by Mr. Edmonds;[12] and (I) the Petitioners were compelled to provide the State Farm with all of its oppressive and even some unlawful discovery demands, such as providing it with their answers to its: (a) two sets of **64 harassing and oppressive interrogatories with subparts for each Appellant,** (b) **requests for production of documents from them,** (c) two sets of **79 interrogatories with lengthy subparts for each** Petitioner, some of which had been made to just harass and to oppress them, and (d) **two sets of requests for admissions, almost all of them with subparts**; Petitioners also gave their list of witnesses, among other documents and information and in return they became the victims of a web of deceitfully fraudulent schemes and repeated harassment by the Respondents through their counsel, making them the vulnerable victims of the Respondents' host of unlawful conducts, some of which were bordering on the crimes of misdemeanor.

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[12] It is of note that unlike Dr. Ahmad that Mr. Muawad used to refer to as a "whore doctor," since her deceptive examination of the Petitioners had been literally bought by the State Farm, the Petitioners absolutely had no control over Dr. Policherla, as he was not their agent, and thereby he could and would do whatever pleased him independent of the Petitioners' desire and even rights. In addition, Mr. Muawad referred to Mr. Edmonds as a common hooligan and persistently advised the Petitioners to take him to the Attorney Grievance Commission!

In glaring contrast, however, the Petitioners were denied an opportunity to depose **even one witness** and were **denied their rights to answers to their interrogatories and their requests for admissions** that they timely had served on all the Respondents. The Petitioners' meritorious claims against the State Farm were dismissed only because they, under the advice of their counsel, exercised their rights under the Fifth Amendment relative to the said police incident, even though all medical records regarding that incident had been given to the State Farm. However, both the trial court and a panel of the Michigan Court of Appeals highly materially prejudicially and unlawfully failed to take into their judicial consideration that there was a compelling reason for the Petitioners not to answer certain questions in exercising their Fifth Amendment regarding the case relative to the police incident. Nonetheless, the State Farm, through its unprincipled and perjurious lead attorney, fraudulently had already claimed in various papers, such as the case evaluation and facilitation summaries, that the Petitioner Aslani, among other violations, allegedly had "spat in security guard's face," which is an outrageously false and criminal allegation!

Moreover, as to the police incident both Messrs. **Herrmann and Muawad had advised the Petitioners not to answer any questions regarding that incident except those concerning his sustained injuries**; both of these attorneys had also advised them not to answer any questions as to their employment, as they were not seeking any wage compensation, and in fact, **Mr. Muawad in answering the same question in the State Farm's interrogatory personally answered "Inapplicable" and signed the set of interrogatories himself on behalf of the Petitioner Aslani.**

As the court records irrefutably show, the Petitioner Aslani had provided his entire medical records to the State Farm and had satisfied all of the questions regarding his sustained injuries in his police incident to the State Farm prior to his second deposition and had provided medical authorization for any physician who had treated him in more than two decades, including those physicians who had treated him relative to his police incident; in fact, in his second deposition the Petitioner Aslani specifically stated that **"Any question with regard to injury and stuff, I would like to answer that . . . . anything with regard to the charges that happened, no, because it is still pending, as it has not been decided"** (Tr.02/11/08, 15). He repeatedly advised the harassing and insulting Mr. Edmonds that he would answer all the questions concerning his injuries sustained in the police incident once again (Tr.02/14/08, 14), even though they had been answered repeatedly in the past; it is of note that in the past Mr. Edmonds, criminally had made threats that he would resort to any conducts to deny the Petitioners' meritorious claims.

On March 7, 2008, the trial court entered its order denying the Petitioners' Motion for Reconsideration from her February 8, 2008, order in which she, being a bigot, unreasonably, unjustly, and racially motivated, denied the Petitioners' rights to discovery against the State Farm, and thereby abusively restricted their interrogatories directed to the State Farm to only 25 questions without even any subparts (Tr. 02/08/08, 7).

In her decision for her placing a materially prejudicial restriction on the Petitioners' interrogatories, the trial court simply noted that they had been "excessive" (Tr. 02/08/08, 4), and that under federal rule she could have limited the Petitioners' interrogatories—

and not the State Farm—to about only 16 (Tr. 02/08/08, 7), which in and by itself was in drastic contrast with the State Farm's multitudinous discovery against the Petitioners—**143 interrogatories with subparts directed to each** Petitioner!

The Petitioners' **two sets of requests for admissions constituted the only meaningful discovery that they could have exercised and their requests for admissions were covering their entire suit. Under MCR 2.302(B) no restriction should be placed on the number of requests for admissions.** The Petitioners, however, were denied discovery and thereby **the trial court substantially and materially prejudiced their rights, particularly their ability to prepare for the trial.**

To be sure, the mindset of the racist trial court was to dismiss the Petitioners' claims against the Respondents regardless of the existence of various genuine issues of material fact and law, while denying the Petitioners' rights to even speak on the record in opposition to granting the Respondents' motions for summary judgment. Ironically, the trial court in open court had already decided to find any excuse to deny the Petitioners their rights (Tr. 09/28/07, 16). In truth, her orders for summary-disposition motions highly breached the very standards that have been set by *West v. General Motors Corporation,* 469 Mich 177; 665 NW2d 468 (2003), which, at 183, opined:

> . . . **Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law** [emphasis added].

In her declining to take into her judicial consideration the genuine issues of material fact, the

bigoted trial court even disregarded the Petitioners' affidavit that they had filed in opposition to the motion for the summary disposition, as there were many issues of material fact that had not been dealt with.

Furthermore, Joseph Kirchmaier's said motion and James Kirchmaier's affidavits, dated November 26, 2007, and January 16, 2008, raised more troubling and genuine issues of material fact than they answered.

The case in point, in his two affidavits, James Kirchmaier, whose identity and place of residence as the lessee of the 2001 Saab had been intentionally fraudulently concealed from the Petitioners by the State Farm and by the other two Respondents, through their attorneys, failed to answer many material questions, some of which were as follows: When did he become aware of the issues that he had stated in his affidavit? Why in his affidavit did he identify an incorrect V.I.N. for his 2001 Saab as YS3EF48Z123026915? Who so advised him? When did he discover that the Petitioners had brought an action against him? Who originally communicated with him to advise him of this matter? Why did he so readily prepare an affidavit for Joseph Kirchmaier, who had been a total stranger to him? Why did not Joseph Kirchmaier, himself, prepare his affidavit in support of his own motion for summary disposition? Why did Joseph Kirchmaier in his said motion never indicate that he had no knowledge of James Kirchmaier? Was Joseph Kirchmaier's insurance carrier the State Farm with $500,000.00 coverage? In case it was, since when has he been holding this insurance policy? Is the last name, "Kirchmaier," of "Joseph" and "James" just a strange uncanny coincidence? Who is Jay Kirchmaier that the State Farm listed in its witness list? Has the State Farm been compensating Mr. Daniels and his law firm their attorney fees for representing Joseph Kirchmaier in this

case? Since James Kirchmaier allegedly did not permit Simon to drive his vehicle and since he caused the said accident (Tr.12/21/08, 9), then who gave him such a permission and why, particularly since he did not have any auto insurance, or driver's license and was found to be the at-fault driver by the police, and under the law had committed a misdemeanor?[13] Did Joseph Kirchmaier steal the said vehicle? When did James Kirchmaier discover that Simon had driven his vehicle and had caused the Petitioners' accident? Why did James Kirchmaier not contact the Petitioners to advise them of his insurance policy and of the allegation that he had not permitted Simon to drive his vehicle? Why did he not report Simon to the police for such a violation? To what extent, have all of the Respondents and their attorneys been involved in their fraudulent

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[13] However, thanks to his close friend/attorney, Mr. Charles Berschback (P35554) and his brother Mr. Donald Berschback P10757) issues apparently were swept under the rug of corruption.

It was through FOIA that the Petitioners recently have discovered that these two brothers prior to the date of their accident have been attorneys for the City of Grosse Pointe Woods, where the accident occurred. It explains as to why Simon, who allegedly was ticketed for driving without a license, no proof of auto insurance and for being at fault, **was not charged with a misdemeanor or jailed**. Moreover, it explains why the police report for the said accident was provided to the Petitioners months dilatorily and deceptively and in contradiction of what the Petitioner Knubbe had witnessed, herself, at the scene of the accident and also what she was advised at the hospital by one of the police officers and as to why that report has been in contradiction of the report made by what the agent of the "MEDCOM UNIT 84-A-265" of the Grosse Pointe Woods Public Safety ambulance had reported in its "PREHOSPITAL CARE RUNSHEET," which all of the Respondents' counsel with intent failed to attach to their papers filed in the courts and failed to even make any reference to it!

shell game of hiding the key information about James Kirchmaier from the Petitioners? Why did James Kirchmaier decide to come forward with his affidavit in support of Joseph Kirchmaier only at the eleventh hour, while counting from the date of the appearance of Joseph Kirchmaier, to wit, June 19, 2007, James Kirchmaier remained in hiding 160 days before his November 26, 2007, affidavit surfaced? To what extent had Mr. Daniels and his law firm conspired with the State Farm and its attorneys, particularly Mr. Edmonds, as to deceiving the Petitioners and the lower courts that Joseph Kirchmaier, rather than James Kirchmaier had been the lessee of the vehicle causing the accident, and that he had been a citizen of Ohio and not Michigan? By playing the flagrant shell games with the Petitioners as to the residency of Simon, to what extent did the State Farm's attorneys conspire with Mr. Daniels and his law firm in obstructing justice against the Petitioners? There are numerous other genuine issues of material fact which were simply ignored by the racist trial court that rushed to unlawful judgment to deny the Petitioners' rights, and even the Michigan Court of Appeals rubberstamped such an unlawful and prejudicial ruling.

Furthermore, to add insult to injury, the racist and bigoted trial court prejudicially erred in failing to recuse herself sua sponte under MCR 2.003(B)(1), as she acted with a deep-rooted animus against the Petitioners and in favor of the Respondents and their unprincipled counsel.

The racist and bigoted and prejudiced trial court with her hostile body language, facial expressions, attitude, tone of voice, manner of speaking, posture, hostility, animus, glaring, shouting insults at the Petitioners, **treated them as proverbial dirt**, while she refused to consider various incontrovertible issues of

fact and law and documentary evidence and truth which were in their favor.

Certainly such an extreme disregard by her for the Petitioners' substantive rights and dignity is inconsistent with our system of jurisprudence, which has always meant to endeavor "to prevent even the probability of unfairness" *Withrow v. Larkin,* 421 U.S. 35, 46-47; 95 S.Ct. 1456, 1464; 43 L.Ed.2d 712 (1975).

She continued to violate the Petitioners' rights, as in its quoting this Court's own cases, to wit, *Offutt v. United States*, 348 U.S. 11, 14; 75 S.Ct. 11, 13; 99 L.Ed. 11 (1954), the United States Supreme Court in *Mayberry v. Pennsylvania*, 400 U.S. 455, 465; 91 S.Ct. 499, 505; 27 L.Ed. 2d 532 (1971) presciently opined that "justice must satisfy the appearance of justice." In addition to the violation of the mandates of a host of Michigan court rules, some of which are cited above, the trial court prejudicially and unlawfully violated, inter alia, the Petitioners' rights guaranteed under the Fifth, the Seventh and the Fourteenth Amendments to the federal Constitution.

Moreover, the trial court had unlawfully imposed the services of Mr. Muawad on the Petitioners against their objections and desire and in breach of their constitutional rights, as under Art. 1. § 13 of the Michigan Constitution it has been mandated that "**A suitor in any court of this state has the right to prosecute or defend his suit**, either **in his own proper person** or by an attorney" (emphasis added). Thus, she intentionally and unlawfully imposed on them the fraudulent services of Mr. Muawad, who had conducted himself highly unprofessionally and incompetently in this case, and who had insulted and threatened them and had failed to take even an elementary action to protect their rights and had been

in cahoots with the other Respondents and their counsel against them.[14]

Therefore, since it was primarily the State Farm that through its attorneys, in conspiracy with other counsel of record, that intentionally and fraudulently deceived the Petitioners and played deceitful shell games with them as to the identity and place of residency of Simon, and the owner/lessee of the 2001 Saab, by providing three names: **Joseph Kirchmaier, James Kirchmaier and Jay Kirchmaier**, consequently, it must be held primarily accountable to make the Petitioners whole. Nonetheless, the racist trial court simply rubberstamped her January 18 and 24, 2008, orders, while—because of her bigotry and entrenched animus towards the Petitioners—she unlawfully denied their rights and a panel of the Michigan Court of Appeals prejudicially failed to review such scandalous conducts on the part of the trial court and the counsel of record.

The State Farm, through its attorneys and their law firm, conspired and colluded with the counsel for Joseph Kirchmaier and Simon. In fact, Mr. Daniels in his **affidavit**, filed in the trial court, claimed that his client had been Joseph Kirchmaier (**Appendix L**). In furthering their conspiracy, Mr. Daniels never filed any affidavit of his own client, Joseph Kirchmaier; instead, on April 16, 2008, he and his law firm filed a deceitful appearance in the Michigan Court of Appeals fraudulently claiming that they were representing

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[14] When Mr. Muawad filed his unprofessional motion to withdraw representation of the Petitioners by him and his law firm, he warned them that should they object to his said motion, he would damage their rights, which he already had done considerably, to the point that they would lose their rights relative to their meritorious claims completely.

James Kirchmaier (Appendix M) whom they had never represented in the trial court.[15]

On March 28, 2008, and April 18, 2008, the Petitioners timely filed their Claim of Right to Appeal and docketing statement in the Michigan Court of Appeals, respectively.

On April 16, 2008, the attorneys for Joseph Kirchmaier, filed their appearance papers in the said court **on behalf of "James Kirchmaier,"** while knowing that under all of the trial court records and specifically under the **affidavit of Mr. Daniels, himself,** he and his said law firm all along had been representing only Joseph Kirchmaier, and not James Kirchmaier **(Appendices L and M)**.

On May 21, 2008, Mr. Daniels and his law firm brought a fraudulent motion to dismiss the Petitioners' meritorious Claim of Right to Appeal against the owner/lessee of the vehicle, causing the accident, to wit,

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[15] Moreover, they filed motions in the Michigan Court of Appeals falsely and deceptively claiming that they were representing James Kirchmaier and wanted to dismiss the Petitioners' appeal against him, while he had not been represented by them at all. Interestingly enough, at the trial court these attorneys in support of the Respondent Joseph Kirchmaier's motion for summary disposition, presented the affidavit of James C. Kirchmaier in which he had asserted that he had been "the lessee of a 2001 silver Saab," causing the concerned accident and that Joseph had not been his name and that he had not known anyone by that name. In addition, to further hoodwink the said appellate court and to further obstruct justice against the Petitioners and to deny them their rights under the due process of law, they falsely claimed that the two cases in the lower court had not been consolidated and that the Petitioners had failed to file their appeal timely. After the Petitioners provided their response, the said court, while acquiescing with the Petitioners' positions, entered an order rejecting these **attorneys' said threefold deception**, however, that court failed to sanction them for perpetrating fraud on it and for their attempting to **obstruct justice against the Petitioners**.

James Kirchmaier, whom these attorneys had never represented in the lower courts and whom they claimed their client, Joseph Kirchmaier, had no knowledge about or relationship with, while to further hoodwink the said appellate court, they deceitfully flagrantly asserted that Case No. 07-703871-NI had not been consolidated with Case No. 06-625234-NF, and also deceptively claimed that the Petitioners had been dilatory in filing their Claim of Right to Appeal.[16]

On June 11, 2008, the Petitioners in their "*Responsive Brief to the Deceptive and Vexatious Motion Filed by Attorneys for Defendant-Appellee Joseph Kirchmaier*" brought to the attention of the Michigan Court of Appeals, the unprofessional and deceptive conducts of the said unprincipled attorneys.

On July 25, 2008, the Michigan Appellate Court, while properly denying the said motion brought by the attorneys for Joseph Kirchmaier, and despite the deceptive argument presented by them, determined that the two cases in the lower courts had been consolidated; it also ruled that the error in misnaming one of the Respondents in this appeal had not been of a magnitude that warranted dismissal; moreover the Michigan Appellate Court ordered that the third Respondent in this case was Joseph Kirchmaier and not James Kirchmaier.

In its highly deceptive "per curiam," dated September 15, 2009, made in a lengthy ten pages of rambling as to its various malicious misrepresentations

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[16] It is of note that according to Mr. Muawad, Mr. Daniels had advised him confidentially that he all along had been representing Mr. James Kirchmaier and had a contract with him, and not with Mr. Joseph Kirchmaier, and that there had been no reason to represent Joseph Kirchmaier, as he had not been the lessee of the vehicle causing the accident.

of the germane issues of fact and thereby law, a panel of the Michigan Court of Appeals, to wit, Judges Peter D. O'Connell, Michael J. Talbot, and Cynthia Diane Stephens, not only out of their, inter alia, racism and bigotry and islamophobia, and acting as the lackeys of the corrupt corporations, affirmed the fraudulent and prejudicial orders of the trial court, while repeatedly dishonorably misinterpreted and/or misrepresented various germane issues of fact and thereby law against the Petitioners and in favor of the Respondents and their counsel in order to make its unlawful rubberstamping of the trial court's orders deceitfully justifiable (**Appendix K**). The following are only some illustrations of the said deceitful panel's dishonorable falsifications, **which have been highlighted as follows**:

"Plaintiffs contend that the trial court engaged in improper judicial construction of MCR 2.313 because the written order only required that they and Dr. Policherla appear for their depositions, **not that they answer questions posed to them**" (page 2 of **Appendix K**).

"Likewise, Knubbe refused to answer questions regarding the Lansing police incident, **repeatedly claimed not to know the answers to questions, persistently asked questions of State Farm's attorney contrary to the trial court's directive, and argued with the attorney**"(page 3 of **Appendix K**).

"Although dismissal is an extreme sanction, plaintiffs' failure to answer questions and their general uncooperativeness during their depositions was willful rather than accidental. Their argumentative dispositions during questioning were reflective of their conduct throughout the duration of the trial court proceedings" (page 3 of **Appendix K**).

"**The record also reflects that plaintiffs threatened their attorney, argued with the trial court . . . failed to appear for their depositions, abused the discovery process by serving State Farm with 168 requests for admission, many of which were not germane to their claims and were insulting and harassing to State Farm's attorneys, and refused to cooperate with discovery**" (page 3).

"Although plaintiffs contend that they were denied an opportunity to be heard at the February 29, 2008, hearing, **the trial court refused to allow Aslani to speak because he was represented by counsel, who was permitted to speak and argue on his behalf**" (page 3 of **Appendix K**).

"Because plaintiffs failed to challenge the order before it was entered, **despite ample opportunity to do so, the trial court did not abuse its discretion by denying their motion for reconsideration**" (p4).

"**In addition, the record shows that plaintiffs' 25 interrogatories contained numerous questions that were not germane to the merits of their claims and instead personally attacked State Farm's attorneys. Thus, the record evidences that plaintiffs used their requests for admission to perpetuate their abuse of the discovery process**" (page 4 of **Appendix K**).

"**In any event, the record shows that many of plaintiffs' requests for admission were not relevant to their claims and instead merely harassed State Farm's attorneys. Thus, the record evidences that plaintiffs used their requests for admission to perpetuate their abuse of the discovery process**" (page 5 of **Appendix K**).

"According to Simon, in later conversations with Berschback, plaintiffs' counsel indicated that he did not intend to pursue a claim against Simon. Thus, the

record shows that plaintiffs had a means of obtaining personal jurisdiction and proper service over Simon during any period of time in which Simon was absent from the state" (page 6 of **Appendix K**).

"Here, despite plaintiffs' protestations to the contrary, **nothing indicates that any of the defendants fraudulently concealed James Kirchmaier's identity as the lessee of the vehicle involved in the accident.** Although State Farm erroneously identified Joseph Kirchmaier, an Ohio resident, as its insured, **the record fails to indicate that this misrepresentation was anything other than innocent. Plaintiffs have not shown that defendants engaged in any contrivance to prevent discovery of James Kirchmaier's identity**" (page 7).

"**Nothing in the record, however, indicates the State Farm engaged in any fraudulent conduct**" (page 9 of **Appendix K**).

This is the same deceitful panel that in its order, dated, August 27, 2009, denied the Petitioners' meritorious motion to adjourn the hearing, as the Petitioner Aslani was seriously in ill-health condition (**Appendix D**); and again it was the same panel that denied the Petitioners' request to seal all the files or redact the private information, such as their social security numbers that the State Farm maliciously and unlawfully had placed in the public records in order to make them the victims of identify theft, which they became. The corporate lackeys will resort to any lawless orders to protect corrupt corporations such as the State Farm in this country that supposedly is that of law and not that of man.

The Michigan Court of Appeals also in its order, dated, September 15, 2009, denied the Petitioners' motion objecting to the Respondents' resorting to various fraudulent deceptions in their cross-appeal

briefs, and also objecting to their briefs for their being made via "cross-appeal."

Although the Michigan Supreme Court in its order, dated January 22, 2010, acquiesced with the Petitioners and thereby ordered the redaction of their social security numbers from their files (**Appendix A**), it in another order, dated April 27, 2010, failed to sanction the unscrupulous counsel of record for their various **fraudulent conducts**, in particular, the attorneys for the Respondent State Farm (**Appendix B**).

The said court failed to hold all of the counsel of record in contempt and to sanction them and to redact all of the Petitioners' private information from their court files. *Arakawa v. Sakata,* 133 F. Supp.2d 1223, 1229-1230 (D.Haw.2001) concluded "that there is a constitutional right to privacy in the information released about Plaintiff in this case, specifically his SSN"; see *Arakawa, supra, at* 1229.

In any event, any discussion of constitutionally protected privacy rights must commence with *Whalen v. Roe,* 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977). In *Whalen,* the Supreme Court, at 599-600, explicated that there are two types of privacy interests that may be constitutionally protected. *"One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions."* See also *Nixon v. Administrator of Gen. Servs.,* 433 U.S. 425, 457, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977); *In re Crawford,* 194 F.3d 954, 958 (9th Cir. 1999). The Court did not elaborate, however, on the extent of the constitutional privacy protection, because it held that the state statutory scheme evidenced "a proper concern with, and protection of, the individual's interest in privacy." *See id.* at 605-06, 97 S.Ct. 869. It is of note that several courts have found

that there exists a violation of a constitutional privacy right in the public disclosure of private medical information. *See, e.g., Doe v. Attorney General,* 941 F.2d 780 (9th Cir. 1991) (collecting cases); *Doe v. New York,* 15 F.3d 264 (2d Cir. 1994); *United States v. Westinghouse Elec.Corp.,* 638 F.2d 570 (3d Cir.1980; *Woods v. White,* 689 F.Supp. 874 (1988). *Arakawa v. Sakata,* 133 F.Supp.2d 1223, 1226 (D.Haaw. 2001).

The Michigan Court of Appeals erred in its failing to hold sanctions against the State Farm and its attorneys for their numerous violations, including the denial of the Petitioners' rights to their privacy, by, inter alia, maliciously intentionally breaching their privacy rights relative to their birth dates, social security numbers, driver's license numbers, home address, and even information concerning their medical conditions; the State Farm, through its attorneys, maliciously failed to redact the Petitioners' social security numbers, and birth dates in violation of the mandate of Fed.R.Civ.P. 5.2. This requirement applies to all documents including their attachments, and thereby in so doing the said Respondent subjected the Petitioners to identity theft, and thereby causing them substantial mental anguish and high anxiety, and thereby causing them pain and suffering **and additional deterioration of their ill-health.**

As the aforementioned arguments have illustrated, all of the unscrupulous counsel of record repeatedly committed conducts that are unbecoming to a professional attorney. However, they did so in order to harass the Petitioners and to deny their meritorious claims, while knowing that they have been suffering from poor health, by essentially colluding with one another, and thereby intentionally maliciously have caused the Petitioners considerable mental anguish and unnecessary hardship in pursuing their

meritorious claims. Moreover, all the counsel of record, in particular Messer. Edmunds and Daniels, have committed fraud on the court, as their conducts perfectly fit the definition provided by *Tingley v. 900 Monroe, LLC;* 266 Mich App 233; 731 NW2d 427 (2005), which at 246, defined fraud in Michigan as follows:

> In Michigan, "'[a] **fraud is perpetrated on the court when some material fact is concealed from the court or some material misrepresentation is made to the court.'"** *Matley v. Matley, (On Remand),* 242 Mich.App. 100, 101; 617 N.W.2d 718 (2000).

As it has been established, the State Farm's attorneys, while conspiring with other counsel of record, perpetrated fraud upon a case evaluator, a facilitator, the federal court, the trial court, the Petitioners and their prior attorneys, particularly with regard to the identity of the driver at fault and the lessee of the vehicle causing the accident, as all of the elements of fraud have been satisfied. Please see *Kassab v. Michigan Basic Property Ins Assoc,* 441 Mich 433, 442; 491 NW2d 545 (1992); *Fidelity & Deposit Co. of Maryland v. Drover's State Bank, C.C.A.Minn.,* 15 F.2d 306 (1926); *Nonantum Inv.Co. v. Maryland Casualty Co., C.C.A. Mass.,* 56 F.2d 329 (1932); *Miller v. U.S.,* C.C.A.Kan., 120 F.2d 968 (1941); *Arlington Trust Co. v. Hawkeye-Security Ins. Co., D.C.Va.,* 301 F. Supp. 854 (1969).

In reality, the conducts of the attorneys for the State Farm here are downright criminal and thereby sanctionable, as *Couyoumjian v. Anspach,* 360 Mich 371; 103 NW2d 587 (1960), at 374, while referencing the statute, CL 1948, § 601.64, essentially as part of its holding quoted the following:

> "Sec. 64. Any **attorney** or counselor **who shall be guilty of any deceit or collusion, or shall consent to any deceit or collusion, with intent to deceive the court or any party, shall be deemed guilty of a misdemeanor. . .** [emphasis added].

The Michigan court of last resort while properly denying Joseph Kirchmaier's deceptive motion to strike, and while simultaneously denying the Petitioners' Application for Leave to Appeal, granted them only the redaction of their social security numbers from their court records under the requirement of its own Administrative Order No. 2006-2 (**Appendix C**), whereas that court erroneously failed to subject the fraudulent State Farm and its deceitful attorneys, among other counsel of record, to punishments for contempt and did not hold them liable for condign costs and reasonable expenses or proper sanctions in favor of the Petitioners. In fact, under the same Order, it has been provided that:

> 2. **No person shall file a document with the court that contains another person's social security number . . . . A person who files a document with the court in violation of this directive is subject to punishment for contempt and is liable for costs** and attorney fees related to protection of the social security number [emphasis added] (**Appendix C**).

However, the Michigan Supreme Court failed to grant the Petitioners reasonable costs and expenses and compensation for time that they have invested to protect their rights to their confidential and private information, including the unlawful and malicious

dissemination of their social security numbers by the said Respondent and its dishonest and malicious attorneys who have committed various fraudulent conducts while colluding with other counsel of record, resulting in defrauding the Petitioners of their established claims against all of the Respondents.

In addition, the said court failed to direct the clerk of the Michigan Court of Appeals and the clerk of the Wayne County Circuit Court to redact not only the Petitioners' social security numbers, but also any other private information in the Petitioners' court records, such as their driver's license numbers, their medical records, their birth dates and their home address, or in the alternative enter an order to seal all of their court records.

Moreover, the said court failed to hold in contempt the State Farm and their dishonest attorneys, to wit, Mr. Nathan J. Edmonds (P51453), Mr. Michael J. Jolet (P67464), Ms. Brandy L. Kuretich (P61505), Ms. Tara H. Bratton (P42730), Mr. Michael L. Updike (P28964), and Ms. Stacey L. Heinonen (P55635), and their law firm, Secrest Wardle, and the chairman of the board and the chief executive officer of the State Farm, who has a law degree (with Illinois State Bar No. 2425890), to wit, Mr. Edward B. Rust Jr., and to hold in contempt Mr. Michael P. Daniels (P35009) and Mr. Charles T. Berschback (P35554) and the Petitioners' own deceitful and unprofessional attorney, Mr. Elias Muawad (P41632), and his law firm, Muawad & Muawad, P.C., that had conspired through unlawful schemes of fraud with all of the attorneys of record and their law firms to deny the Petitioners' their rights to discovery and the due process of law, among numerous other violations resulting in the unlawful dismissal of their meritorious claims against all the Respondents;

thus they owe the Petitioners thousands of dollars just in sanctions.

REASONS FOR GRANTING THE PETITION

The Fourteenth Amendment was ordained to secure equal rights to all persons and to insure to all persons the enjoyment of such rights. *Ex parte Commonwealth of Virginia*, 100 U.S. 338, 340; 10 Otto 339; 1879 W.L. 16561 (U.S. Va.), 25 L.Ed. 676 (1879). To be sure, the attendant circumstances of each case govern the determination as to whether there has been denial of equal protection. U.S.C.A. Const. Amend. 14; *Griffin v. County School Bd. of Prince Edward County*, 377 U.S. 218; 84 S.Ct. 1226, 1233; 12 L.Ed. 2d 256 (1964).

It has been an established principle that the objective of the equal protection clause "is not a disembodied equality," and that the "laws" referred to in the Fourteenth Amendment, enjoining "equal protection of the laws," are not "abstract propositions." *Griffin v. Illinois*, 351 U.S. 12; 76 S.Ct. 585, 592; 100 L.Ed. 1559 (1942).

"Equal protection of the laws" is not an abstract right, but is a command which the state must respect. *Hill v. State of Tex.*, 316 U.S. 400; 62 S.Ct. 1159, 1162; 86 L.Ed. 1559 (1942).

To be sure, the guarantee of the "equal protection of the laws" is a pledge of the protection of equal laws. *Skinner v. State of Okl. ex rel. Williamson*, 316 U.S. 535; 62 S.Ct. 1110, 1113; 86 L.Ed. 1655 (1942).

Certainly, equal protection to all is a basic principle upon which rests justice under the law. *Pierre v. State of La.*, 306 U.S. 354; 59 S.Ct. 536, 539; 83; L.Ed. 757 (1939).

The general review power of the Michigan state court of last resort is grounded in the Michigan Constitution1963, Art. 6, whose § 5 gives it "power to promulgate and implement rules of practice and procedure for Michigan courts," and under its § 4 that court "shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court." *People v. Coles*, 417 Mich. 523, 533-534; 339 N.W.2d 440 (1983).

Furthermore, the Michigan Supreme Court "has defined its authority, as permitted by the foregoing constitutional and statutory provisions, to include the power to:

> "**Give any judgment and make any order which ought to have been given or made, and make such other and further orders and grant such relief as the case may require.**" GCR 1963, 865.1(7). [Emphasis supplied. **Coles**, at 534.]

Therefore, the Michigan Supreme Court, having a broad jurisdiction and far-reaching powers in the area of appellate review, easily could have utilized such an encompassing power, and in the interest of serving the ends of justice it could have granted the Petitioner's application, as they have been victims of unconscionable corruption, fraud, and lawlessness. Moreover, the said court violated the mandates of various Michigan court rules, some referenced above, that itself has promulgated and has permitted the lower courts to violate the Petitioners' rights under the Michigan Constitution, and the Fifth, the Seventh, and the Fourteenth Amendments, among many state and federal precedents (**Appendices E, F,** and **G**).

Even under the provision of the Magna Carta of 1215, it was mandated that "To no one will we sell, to no one deny or delay, right or justice."

CONCLUSION

Wherefore, for all the grounds set forth herein above, the Petitioners, while fervently appealing to the sense of decency and judicial integrity of this Court, respectfully pray for granting their ***Petition for Writ of Certiorari.***

Respectfully submitted,

By: _____
David Aslani appealing pro se

By: _____
Sheila Knubbe appealing pro se

Dated: November 24, 2010.

APPENDIX A

Order

January 22, 2010

139788 & (188)

Michigan Supreme Court
Lansing, Michigan

Marilyn Kelly,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

DAVID ASLANI and SHEILA KNUBBE,
Plaintiffs-Appellants,

V

SC: 139788
COA: 284572
Wayne CC:06-625234-NF
07-703871-NI

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, KEVIN THEODORE SIMON, AND JOSEPH KIRCHMAIER,
Defendants-Appellees.

_____/

On order of the Court, the motion to strike is DENIED. The application for leave to appeal the September 15, 2009 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. However, we DIRECT the Clerk of the Court of Appeals and the Clerk of the Wayne Circuit Court to redact the plaintiffs' social security numbers from the case files in accordance with AO 2006-2.

(Seal) SEAL OF THE MICHIGAN SUPREME COURT · LANSING

0114

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 22, 2010
Date

/s/ Corbin A. Davis
Clerk

APPENDIX B

Order

April 27, 2010

Michigan Supreme Court
Lansing, Michigan

Marilyn Kelly,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

139788 (193)

DAVID ASLANI and SHEILA KNUBBE,
Plaintiffs-Appellants,

V

SC: 139788
COA: 284572
Wayne CC:06-625234-NF
07-703871-NI

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, KEVIN THEODORE SIMON, AND JOSEPH KIRCHMAIER,
Defendants-Appellees.

_____/

On order of the Court, the motion for reconsideration of this Court's January 22, 2010 order is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

(Seal) SEAL OF THE MICHIGAN SUPREME COURT · LANSING
p0419

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 27, 2010
Date

/s/ Corbin A. Davis
Clerk

APPENDIX C

Order

Michigan Supreme Court
Lansing, Michigan

February 10, 2006

ADM File No. 2005-02

Administrative Order No. 2006-2
Privacy Policy and Access to Court Records

Clifford W. Taylor
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

The Social Security Number Privacy Act, 2004 PA 454, requires all persons who, in the ordinary course of business, obtain one or more social security numbers, to create a privacy policy in order to ensure the confidentiality of social security numbers, prohibit unlawful disclosure of such numbers, limit access to information or documents containing social security numbers, provide for proper disposal of documents containing social security numbers, and establish penalties for violation of the privacy policy.

The management of documents within court files is the responsibility of the judiciary. In the regular course of business, courts are charged with the duty to maintain information contained within public documents that is itself non-public, based upon statute, court rule, or court order. In carrying out its responsibility to maintain these documents, the judiciary must balance the need for openness with the delicate issue of personal privacy. In an effort to prevent the illegal or unethical use of information found within court files, the following privacy policy is provided for all court records, effective March 1, 2006, and to be implemented prospectively.

Accordingly, on order of the Court,

A. The State Court Administrative Office is directed to assist trial courts in implementing this privacy policy and to update case file management standards established pursuant to this order.

B. Trial courts are directed to:

1. limit the collection and use of a social security number for party and court file identification purposes on cases filed on or after March 1, 2006, to the last 4 digits;

2. implement updated case file management standards for nonpublic records;

3. eliminate the collection of social security numbers for purposes other than those required or allowed by statute, court rule, court order, or collection activity when it is required for purposes of identification;

4. establish minimum penalties for court employees and custodians of the records who breach this privacy policy; and

5. cooperate with the State Court Administrative Office in implementing the privacy policy established pursuant to this order.

On further order of the Court, the following policies for access to court records are established.

ACCESS TO PUBLIC COURT RECORDS

Access to court records is governed by MCR 8.119 and the Case File Management Standards.

ACCESS TO NONPUBLIC RECORDS

1. Maintenance of nonpublic records is governed by the NonPublic and Limited Access Court Records Chart and the Case File Management Standards.

2. The parties to a case are allowed to view nonpublic records within their court file unless otherwise provided by statute or court rule.

3. If a request is made by a member of the public to inspect or copy a nonpublic record or a record that does not exist, court staff shall state, "No public record exists."

SOCIAL SECURITY NUMBERS AND NONPUBLIC RECORDS

1. The clerk of the court shall be allowed to maintain public files containing social security numbers on documents filed with the clerk subject to the requirements in this section.

2. No person shall file a document with the court that contains another person's social security number except when the number is required or allowed by statute, court rule, court order, or for purposes of collection activity when it is required for identification. A person who files a document with the court in violation of this directive is subject to punishment for contempt and is liable

for costs and attorney fees related to protection of the social security number.

3. A person whose social security number is contained in a document filed with the clerk on or after March 1, 2006, may file a motion asking the court to direct the clerk to:

   a. redact the number on any document that does not require or allow a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification; or

   b. file a document that requires or allows a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification, in a separate nonpublic file.

The clerk shall comply with the court's order and file the request in the court file.

4. Dissemination of social security numbers is restricted to the purposes for which they were collected and for which their use is authorized by federal or state law. Upon receiving a request for copies of a public document filed on or after March 1, 2006, that contains a social security number pursuant to statute, court rule, or court order, or for purposes of collection activity when it is required for identification, a court shall provide a copy of the document after redacting all social security numbers on the copy. This requirement does not apply to requests for certified

copies or true copies when required by law or for requests to view or inspect files. This requirement does not apply to those uses for which the social security number was provided.

RETENTION AND DISPOSAL OF NONPUBLIC RECORDS

Retention and disposal of nonpublic records and information shall be governed by General Schedule 16 and the Michigan Trial Court Case File Management Standards.

(Seal) SEAL OF THE MICHIGAN
SUPREME COURT * LANSING *

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 10, 2006
Dated

/s/ Corbin R. Davis
Clerk

APPENDIX D

Glenn J. Minster, M.D
Lance L. Chaldecott, M.D.
Jason O. Holcomb, M.D.
Jeffrey T. Waldrop, M.D.
Leo D. Ottoni, M.D.
Henri M. Pierre-Jacques, M.D.
John Z. Chrabuszcz, M.D.
Byron C. Pflaum, II, D.O.
Matthew P. Steffes, M.D.

Orthopaedic Specialists

Affiliated with Henry Ford Wyandotte Hospital
Sports Medicine · Spine/Scoliosis · Joint Replacement · Shoulder · Hand/Upper Extremity · Foot/Ankle

ORTHOPAEDIC NOTE

FROM: GLENN J. MINSTER, M.D.

April 21, 2010

To Whom It May Concern:

RE: ASLANI, DAVID

CLINIC #: 74-93-96-8

Mr. Aslani is a patient of mine treated for lumbar disc herniation and spinal stenosis. He recently underwent a lumbar discectomy with decompression and fusion from L2-5 on 03/05/2010. He had a significantly complicated postoperative course with a postoperative DVT and pulmonary embolism. The patient had one replacement of IVC filter on 3/13/2010 by Dr. Thomas Gazdecki. The patient is also been treated with Coumadin, which will be required for approximately six months. He also had problems with a severe flare-up of cholecystitis, which will require a laparoscopic cholecystectomy on 03/24/2010 by Dr. Baidoun.

The patient's hospitalization is also complicated by gastroparesis as well as postoperative pneumonia. The patient was seen in the hospital by Dr. Pensler for the pneumonia and PE as well as Dr. Pervez for diabetes and Dr. Malik for gastroparesis. He was also

seen by Dr. Garg for posttraumatic stress disorder and Dr. Guyon for rehabilitation evaluation.

He was hospitalized for 47 days due to these conditions. He will have a significant recovery period related to all these medical issues that he has been treated for. I would anticipate approximately one year of recovery time for these conditions especially his back fusion procedure. His wife has apparently given him round the clock care, which I feel is necessary for him in recovering from the significant medical problems.

He is also address to other problems; he would likely need to be treated for in the future including his left knee, bilateral wrist, as well as possible hemorrhoid surgeries. I advised him that he wait significant amount of time from recovering from knee surgeries for anything further for him unless it is absolutely essential.

The patient does relate history of multiple injuries leading to his current back problems. He had a motor vehicle accident in 2003 and was diagnosed with pinch nerves in his back. He also relates a history of trauma from advancing police officers and security officers at Sparrow Hospital in April 2005. I feel the patient's disc herniations and degenerative changes in his back were caused by these traumas or exacerbated by them.

If I can be of any further assistance, please do not hesitate to contact me.
Sincerely,

/s/ Glenn J. Minster
GLENN J. MINSTER, M.D.

Date of Dictation: 04/21/2010
Date of Transcription: 04/23/2010
Trans Initials: aby:saa
GJM10180

3200 Biddle Avenue · Wyandotte, Michigan 48192 · (734) 324-3900 Fax (734) 324-3979

APPENDIX E

AMENDMENT V TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX F

AMENDMENT VII TO THE UNITED STATES CONSTITUTION

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

APPENDIX G

SECTION 1 OF AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law

which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX H

UNIVERSAL DECLARATION OF HUMAN RIGHTS

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world * * * *

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and

freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any

discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 17

(2) No one shall be arbitrarily deprived of his property.

APPENDIX I

Sheila Knubbe

P.O. Box 80782
St. Clair Shores, MI 48080-5782
313-882-5241

May 13, 2004

Mr. Edward Rust, CEO and President
State Farm Insurance Companies
One State Farm Plaza E-12
Bloomington, IL 61710
309-766-2311

Re: State Farm Insurance Companies' harassment and endangering my life.

Submitted via first-class mail and certified mail.

Dear Mr. Rust:

As I brought to your attention in my April 22, 2004, correspondence, I am a policy holder as to my car (No. 47 8516-F14-22C) with the State Farm Insurance Companies (hereinafter, "SFIC"). Subsequent to my registering a complaint with you as to my becoming subject to a fraudulent claim by the SFIC that I allegedly had been responsible for causing two auto accidents, I have been subject to harassment and endangerment of my life by someone who claimed to be an agent of the SFIC.

On Friday, May 7, 2004, in the morning while I was driving I noticed a van was tailing me closely in fact so closely that I though it was going to collide with my car in the rear. Then, after few minutes it cut in front of me. I almost had a collision with it and had to put on my brakes to prevent a collision. The driver of the said van deliberately blocked my way and I had to change my lane and after few more minutes he changed his lane too and tailed me closely again. Ostensibly, I was getting worried and wondering who on earth was the driver and why he was doing such a dangerous act. Once more he cut

in front of me and once again he almost caused an accident. Then he changed his lane and while driving on my side, he yelled at me, as if answering my bewilderment as to who he was, announcing that he was "checking out your claim against State Farm." Thereafter, he laughed and drove off and thank God I have not seen him since.

Therefore, I herein demand an explanation for your agent's unlawful, contemptible and appalling conduct and hooliganism. I do not know what kind of business you are involved in; however, if you consider yourself a responsible businessman, you must immediately conduct an investigation into such an impermissible conduct. Whatever the malicious motivation of the SFIC, it cannot endanger my life! You must order your hooligan of an agent to cease and desist such an abominable conduct.

I expect a prompt response from your office concerning this urgent matter.

Sincerely,

/s/Sheila Knubbe
Sheila Knubbe

APPENDIX J

Sheila Knubbe

P.O. Box 437
St. Clair Shores, MI 48080-0437
Telephone: 313-882-4165

March 20, 2008

Mr. Edward B. Rust Jr., CEO and Chairman
State Farm Insurance Companies
One State Farm Plaza E-12
Bloomington, IL 61710
Telephone: 309-766-2311

Re: State Farm's Repeated
violation of the law.

Claim No.: 22-A076-072
Date of Accident: November 25, 2003
Complainants: David Aslani and Sheila Knubbe
Case No.: 06-625234-NF

Dear Mr. Rust:

As you must be aware by now, I and my spouse, David Aslani, are the Plaintiffs who brought action against your company, the State Farm. It, however, through its attorneys, particularly its lead attorney, Mr. Nathan Edmonds, has resorted to, among other violations, every unlawful conduct, including deception, falsehood, and commission of fraud against David and me to deny us our legitimate rights against it.

The State Farm, by and through Mr. Edmonds, personally has expressed his deep-rooted animosity against us and has been determined to deny us our rights by any unlawful means, including insults, false and malevolent accusations, bald-faced and malicious lies and yes harassment.

To top it all off, the State Farm, through Mr. Edmonds, wantonly and flagrantly has placed our private information, particularly our social security numbers, into the public records to be exposed to anyone who potentially might be an identity

thief. This is yet another intolerably unlawful and malicious act committed by the State Farm through its unscrupulous and unprofessional attorneys, specifically Mr. Edmonds.

Mr. Rust, according to your website, you are not only the chairman of the board and the chief executive officer of the State Farm, but also have earned your degree in law in Illinois (P2425890), accordingly, you must be quite cognizant of the gravity of the violations of the law committed by the State Farm, through its agents, particularly its attorneys, relative to David's and my claims against it concerning injuries that we have sustained in our motor vehicle accident.

Therefore, I herein request from you, not only as the CEO and the Chairman of the State Farm, but also as a law-abiding member of the bar, who gives deference to his profession, to take the necessary actions and/or measures to remedy the egregious wrongs that the State Farm, through its attorneys, has committed against us, particularly regarding its unlawfully exposing our private information in the public records, causing us considerable mental anguish and anxiety.

Please advise me at the earliest of your convenience as to the urgent and necessary measures that you personally have taken to correct such an unlawful conduct.

Sincerely,

/s/ Sheila Knubbe
Sheila Knubbe

APPENDIX K

STATE OF MICHIGAN
COURT OF APPEALS

DAVID ASLANI and SHEILA KNUBBE,
UNPUBLISHED

Plaintiffs-Appellants,

September 15, 2009

v

No. 284572
Wayne Circuit Court
LC Nos. 06-625234-NF;
07-703871-NI

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, KEVIN THEODORE SIMON, and JOSEPH KIRCHMAIER

Defendants-Appellees.

Before: O'Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

Plaintiffs David Aslani and Sheila Knubbe appeal as of right from a Wayne Circuit Court order dismissing their claims against defendant State Farm Mutual Automobile Insurance Company ("State Farm") in LC No. 06-625234-NF. They also challenge the trial court's order granting summary disposition in favor of defendants Kevin Simon and Joseph Kirchmaier pursuant to MCR 2.116(C)(7) and (10) in LC No. 07-703871-NI. We affirm.

Plaintiffs first argue that the trial court erred by dismissing their claims against State Farm. We disagree. We review for an abuse of discretion a trial court's dismissal of an action for failing to comply with a court order. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 630; 750 NW2d 228 (2008).

"An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Moore v Secura Ins,* 482 Mich 507, 516; 759 NW2d 833 (2008).

MCR 2.504(B)(1) authorizes a trial court to dismiss a plaintiff's claims for failing to comply with a trial court order. That provision states:

> If a party fails to comply with these rules or a court order, upon motion by an opposing party, or sua sponte, the court may enter a default against the noncomplying party or a dismissal of the noncomplying party's action or claims.

This Court has recognized that a dismissal under MCR 2.504(B)(1) is a "drastic sanction" that requires consideration of several factors, including

> "(1) whether the violation was willful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice." [*Woods, supra* at 631, quoting *Vicencio v Jaime Ramirez, MD, PC,* 211 Mich App 501, 507; 536 NW2d 280 (1995).]

Although the trial court relied exclusively on MCR 2.504(B) in dismissing plaintiffs' claims, MCR 2.313(B) also authorizes a trial court to dismiss an action based on a plaintiff's failure to comply with a discovery order. MCR 2.313(B)(2) provides, in relevant part:

> If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may order such sanctions as are just, including, but not limited to the following:
>
> * * *
>
> (c) an order . . . dismissing the action or proceeding or a part of it . . . .

Plaintiffs argue that the trial court erred by dismissing their claims because they and their physician, Dr. Haranath Policherla, complied with the court's February 8, 2008, order. Following a hearing on that date, plaintiffs' counsel drafted the discovery order, which both parties and the trial court signed. The handwritten order states as follows:

> Both Plaintiffs Appear for their Depositions on Monday Feb. 11, 2008—David Aslani—9:00 a.m. and Sheila Knubbe to Immediately follow; Dr. Policherla to sit for His Deposit. on Tues—Feb 12, 08 at 3:00 p.m. Interrogs [sic] to be limited to 25 questions per side and no subparts with 12 point font—All Evidence By Plaintiffs to Be used at trial to Be submitted to Defendant by 2-15-08 12:00 p.m. If Any of this order is not complied with the case is to Be dismissed.

Plaintiffs contend that the trial court engaged in improper judicial construction of MCR 2.313 because the written order only required that they and Dr. Policherla appear for their depositions, not that they answer questions posed to them. Plaintiffs argue that the trial court's oral ruling requiring them to answer questions was not reflected in the written order and, therefore, they did not violate the court's order.

Plaintiffs correctly argue that courts speak through their written orders rather than their oral statements. *In re Contempt of Henry,* 282 Mich App 656, 678; 765 NW2d 44 (2009). It is inherent in the February 8, 2008, order, however, that plaintiffs and Dr. Policherla not merely attend their depositions, but that they answer questions posed to them. It was unnecessary that the order explicitly require plaintiffs and Dr. Policherla to answer the questions asked at their depositions, and the record reflects this understanding. At the February 8, 2008, hearing, the trial court directed plaintiffs to provide answers and not to ask questions during their depositions. Plaintiffs concede in their brief on appeal that the trial court instructed them as such. Although the written order did not explicitly state that they answer the questions posed, an order compelling depositions inherently requires that a deponent answer questions.

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The trial court did not abuse its discretion by dismissing plaintiffs' claims as a result of their wilful [sic] failure to comply with the February 8, 2008, order. During his deposition, Aslani admitted that he was involved in an April 1, 2005, incident with Lansing police officers that aggravated the injuries he received in the November 25, 2003, automobile accident. However, he refused to answer questions and provide details regarding the incident. When State Farm's attorney questioned him regarding the incident, he accused the attorney of harassing him, "prejudicing" his rights, and fraudulently misrepresenting issues. Aslani also refused to answer questions regarding his work history, argued with State Farm's attorney, and told the attorney to stop asking ridiculous questions. Likewise, Knubbe refused to answer questions regarding the Lansing police incident, repeatedly claimed not to know the answers to questions, persistently asked questions of State Farm's attorney contrary to the trial court's directive, and argued with the attorney.

Although dismissal is an extreme sanction, plaintiff's failure to answer questions and their general uncooperativeness

during their depositions was willful rather than accidental. Their argumentative dispositions during questioning were reflective of their conduct throughout the duration of the trial court proceedings. The record evidences that plaintiffs' behavior exasperated their attorney, who at one point moved to withdraw, indicating that he was "tired of the shenanigans, the antics." The record also reflects that plaintiffs threatened their attorney, argued with the trial court, repeatedly accused their attorney and State Farm of failing to provide them discovery, repeatedly accused State Farm's of fraudulent and perjurious conduct, failed to appear for their depositions, abused the discovery process by serving State Farm with 168 requests for admission, many of which were not germane to their claims and were insulting and harassing to State Farm's attorneys, and refused to cooperate with discover. Moreover, as plaintiffs' counsel conceded, Dr. Policherla possessed numerous medical records that were not provided to State Farm pursuant to a subpoena.

At the February 8, 2008, hearing, the trial court warned plaintiffs that it would dismiss their claims if they failed to comply with the order. The trial court indicated at a February 29, 2008, hearing that its February 8, 2008, order was necessary because of "behavior that had gone on before." Although plaintiffs contend that they were denied an opportunity to be heard at the February 29, 2008 hearing, the trial court refused to allow Aslani to speak because he was represented by counsel, who was permitted to speak and argue on his behalf. Therefore, although dismissal is a drastic sanction, the trial court did not abuse its discretion by dismissing plaintiffs' claims against State Farm as a result of their failure to comply with the discovery order.

Plaintiffs next argue that the trial court erred by denying their motion for reconsideration of the February 8, 2008, order. We disagree. We review for an abuse of discretion a trial court's decision on a motion for reconsideration. *Woods, supra* at 629.

MCR 2.119(F)(3) provides trial courts considerable discretion to correct mistakes, preserve judicial economy, and minimize costs to the parties. *Kokx v Bylenga*, 241 Mich App 655, 659; 617 NW2d 368 (2000). The court rule states:

> Generally, and without restricting which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The
>
> -3-
>
> moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Plaintiffs argue that the trial court's February 8, 2008, order was erroneous because it denied them their rights to discovery. Plaintiffs failed to challenge the terms of the order, however, before the court entered the order. Rather, plaintiffs' counsel drafted the order longhand and the attorneys for both plaintiffs and State Farm signed the order along with the trial court. Neither attorney objected to the terms of the order. Accordingly, the trial court noted in its order denying the motion for reconsideration that the parties had stipulated to the terms of the order. Because plaintiffs failed to challenge the order before it was entered, despite ample opportunity to do so, the trial court did not abuse its discretion by denying their motion for reconsideration. See *Woods, supra* at 630.

In any event, plaintiffs contend that the February 8, 2008, order denied them their rights to discovery by restricting their interrogatories to 25 questions without any subparts. Although unsupported by the record, plaintiffs contend that they always complied with State Farm's discovery requests and were repeatedly denied their basic rights to discovery. We note that the 25-question interrogatory limit was reciprocal and applied to State Farm as well as plaintiffs. Plaintiffs fail to indicate what

they were unable to ask State Farm because of the 25-question limit. In addition, the record shows that plaintiffs' 25 interrogatories contained numerous questions that were not germane to the merits of their claims and instead personally attacked State Farm's attorneys. Accordingly, plaintiffs have not shown that the February 8, 2008, order denied them their rights to discovery.

Plaintiffs next argue that the trial court erred by failing to rule that State Farm admitted unanswered requests contained in their first and second requests for admission. We disagree. Although plaintiffs did not request that the trial court deem [sic] the unanswered requests admitted. Thus, they failed to preserve this issue for appellate review by raising it below. We review unpreserved issues for plain error affecting substantial rights. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

MCR 2.312(A) provides, in relevant part:

> [A] party may serve on another party a written request for the admission of the truth of a matter within the scope of MCR 2.302(B) stated in the request that relates to statements or opinions of fact or the application of law to fact, including the genuineness of documents described in the request.

Under MCR 2.312(B)(1), each matter is deemed admitted unless the party to whom the request is directed files an answer or objection within 28 days. If a party challenges a request, it must state its reasons for doing so. MCR 2.312(B)(4).

It appears that plaintiffs served State Farm with their first and second requests for admission on January 11, 2008, and

January 14, 2008. The record shows that State Farm timely filed its objection to both requests for admission on February 1, 2008, arguing that plaintiffs

made a total of 200 requests, many of which were not relevant to their claims for nofault benefits. State Farm requested the trial court's involvement to determine which, if any, of the requests were proper. Although plaintiffs filed an objection to State Farm's objection, they did not file a motion asking the trial court to determine the sufficiency of State Farm's objection or otherwise requesting that the trial court deem the unanswered requests admitted. MCR 2.312(C) provides, in pertinent part:

> The party who has requested the admission may move to determine the sufficiency of the answer or objection. The motion must state that the movant has in good faith conferred or attempted to confer with the party not making disclosure in an effort to secure the disclosure without court action.

Instead of proceeding in accordance with this provision, after filing their objection, plaintiffs simply took no further action regarding the matter. Accordingly, the trial court's failure to deem the requests admitted did not constitute plain error. In any event, the record shows that many of plaintiffs' requests for admission were not relevant to their claims and instead merely harassed State Farm's attorneys. Thus, the record evidences that plaintiffs used their requests for admission to perpetuate their abuse of the discovery process.

Plaintiffs next argue that the trial court erred by granting summary disposition for Simon and Kirchmaier. We disagree. We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although neither Simon nor

Kirchmaier identified MCR 2.116(C)(7) as a basis for their motions for summary disposition, they relied on MCL 600.5805(10),[1] the three-year statute of limitations regarding injuries to persons or property. Moreover, because the trial court granted summary disposition for Simon and Kirchmaier based on the statute of limitations, it appears that the trial court entered its order pursuant to MCR 2.116(C)(7). In reviewing a decision granting summary disposition under subrule(C)(7), we accept the plaintiff's well-pleaded allegations as true and construe them in the plaintiff's favor. *Hanley v Mazda Motor Corp,* 239 Mich App 596, 600; 609 NW2d 203 (2000). In doing so, we may consider any affidavits, depositions, admissions, and other documentary evidence submitted by the parties. *Id.*

The trial court also granted summary disposition for Kirchmaier under MCR 2.116(C)(10) based on the owner's liability statute, MCL 257.401. A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n,* 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id.* at 31.

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[1] The motions for summary disposition erroneously referenced MCL 600.5805(9) rather than MCL 600.5805(10). Subsection (9) was renumbered as subsection (10) pursuant to 2002 PA 715, effective March 31, 2003.

MCL 600.5805(10) provides:

> The period of limitations is 3 years after the time of the death or injury for all other actions

> to recover damages for the death of a person, or for injury to a person or property.

It is undisputed that plaintiffs failed to file their complaint against defendants Simon or Kirchmaier within three years after the accident. The accident occurred on November 25, 2003, and plaintiffs did not file their complaint until February 9, 2007. Thus, plaintiffs' claims are time-barred absent tolling or another means of circumventing the limitations period.

MCL 600.5853 provides:

> If any person is outside of this state at the time any claim accrues against him the period of limitation shall only begin to run when he enters this state unless a means of service of process sufficient to vest the jurisdiction of a Michigan court over him was available to the plaintiff. If after any claim accrues the person against whom the claim accrued is absent from this state, any and all periods of absence in excess of 2 months at a time shall not be counted as any part of the time limited for the commencement of the action *unless while he was outside of this state a means for service of process sufficient to vest the jurisdiction of a Michigan court over him was available to the plaintiff.* [Emphasis added.]

Thus, pursuant to this provision, tolling "is not applicable if the plaintiff had a means of obtaining personal jurisdiction and proper service over the defendant who was no longer in this state." *Ewing v Bolden,* 194 Mich App 95, 100; 486 NW2d 96 (1992).

The record shows that plaintiffs' former attorney sent a letter dated May 11, 2005, to Simon at his Grosse Pointe Farms

address. Simon turned the letter over to his attorney, Charles Berschback, who responded to plaintiffs' counsel in a letter dated July 27, 2005. Berschback informed plaintiffs' counsel that the insurer of the vehicle denied coverage and directed counsel to contact him to discuss the matter on Simon's behalf. According to Simon, in later conversations with Berschback, plaintiffs' counsel indicated that he did not intend to pursue a claim against Simon. Thus, the record shows that plaintiffs had a means of obtaining personal jurisdiction and proper service over Simon during any period of time in which Simon was absent from the state. Accordingly, MCL 600.5853 is inapplicable, and the trial court properly granted summary disposition for Simon based on the statute of limitations.

The trial court also properly granted summary disposition for Kirchmaier based on the statute of limitations. Even though Joseph Kirchmaier is not a correct defendant, plaintiffs did not file suit against him within three years after the accident pursuant to MCL 600.5805(10). Moreover, the limitations period was not tolled pursuant to MCL 600.5856, which provides, in relevant part:

> The statutes of limitations or repose are tolled in any of the following circumstances:
>
> -6-
>
> (a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.
>
> (b) At the time jurisdiction over the defendant is otherwise acquired.

This Court has interpreted these provisions to apply "where a party files suit beyond the limitation period and seeks to toll the time that elapsed during a previously dismissed lawsuit against

the same defendant from the date of service, acquisition of jurisdiction, or placement of process with an officer for delivery until a dismissal that is not based on the merits of the action." *Terrace Land Dev Corp v Seeligson & Jordan,* 250 Mich App 452, 459; 647 NW2d 524 (2002). This circumstance did not occur in this case because there was no previously dismissed lawsuit against Joseph Kirchmaier. In addition, no complaint was ever filed against James Kirchmaier, the proper party, and the trial court never obtained jurisdiction over him.

Further, the statute of limitations was not tolled under MCL 600.5855 based on fraudulent concealment. That provision states:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

"Generally, for fraudulent concealment to postpone the running of a limitations period, the fraud must be manifested by an affirmative act or misrepresentation. The plaintiff must show that the defendant engaged in some arrangement or contrivance of an affirmative character designed to prevent subsequent discovery." *Meyer & Anna Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Institute,* 266 Mich App 39, 48; 698 NW2d 900 (2005) (quotations and citations omitted).

Here, despite plaintiffs' protestations to the contrary, nothing indicates that any of the defendants fraudulently concealed James Kirchmaier's identity as the lessee of the vehicle involved in the accident. Although State Farm erroneously identified Joseph Kirchmaier, an Ohio resident, as its insured, the record fails to indicate that this misrepresentation was anything other than innocent. Plaintiffs have not shown that defendants engaged in any contrivance to prevent discovery of James Kirchmaier's identity. Thus, MCL 600.5855 is inapplicable, and the trial court properly granted summary disposition for Kirchmaier based on the statute of limitations.

In any event, notwithstanding the statute of limitations, the trial court properly granted summary disposition for Kirchmaier based on the owner's liability statute. Assuming that Kirchmaier was the proper defendant, his only involvement in the accident would have been as the lessee of the vehicle that Simon drove, and, as such, his only potential basis for liability is under the owner's liability statute. MCL 257.401 provides, in relevant part:

> (1) . . . The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge.

Pursuant to MCL 257.37(a), a lessee of a vehicle is considered an "owner for purposes of MCL 257.401.

The evidence shows that Simon did not have consent to drive the vehicle and that Simon drove the vehicle without Kirchmaier's knowledge. Again, assuming that plaintiffs had

filed suit against the proper party, the affidavits of James Kirchmaier and Simon establish that James Kirchmaier left the vehicle with David Moore to be repaired and that Simon took the vehicle without Moore or Kirchmaier's knowledge or permission. Plaintiffs' counsel admitted in the trial court that he possessed no evidence to the contrary, and no contrary evidence was presented. Therefore, the trial court properly granted summary disposition for Kirchmaier pursuant to MCR 2.116(C)(10) based on the owner's liability statute. Further, although plaintiffs claim that the orders granting summary disposition for Simon and Kirchmaier contravene their due process and Seventh Amendment rights, they fail to specify how the orders violate their constitutional rights. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for a claim. *Peterson Novelties, Inc v City of Berkley,* 259 Mich App 1, 14; 672 NW2d 351 (2003).

Plaintiffs next contend that the trial court erred by failing to sanction Kirchmaier and State Farm's attorneys. We disagree. We review for clear error a trial court's decision whether to impose a sanction. *Schagewald v Brulé,* 225 Mich App 26, 41; 570 NW2d 788 (1997). A decision is clearly erroneous if, although there exists evidence supporting it, a reviewing court is left with the definite and firm conviction that a mistake was made. *Id.*

"An attorney has an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed." *LaRose Market, Inc v Sylvan Ctr, Inc,* 209 Mich App 201, 210; 530 NW2d 505 (1995). Under MCR 2.114(D), the signature of an attorney or party signifies the following:

(1) he or she has read the document;

> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The filing of a pleading that is not well-grounded in fact and law or that is interposed for an improper purpose subjects the signer of the pleading to sanctions under MCR 2.114(E). *Yee v Shiawassee Co Bd of Commr's,* 251 Mich App 379, 407; 651 NW2d 756 (2002). "MCR 2.114(E) states that the trial court 'shall' impose sanctions upon finding that a document has

been signed in violation of the rule. Therefore, if a violation of MCR 2.114(D) has occurred, the sanctions provided for by MCR 2.114(E) are mandatory." *Guerrero v Smith,* 280 Mich App 647, 678; 761 NW2d 723 (2008).

Plaintiffs argue that the trial court erred by failing to sanction the attorneys representing State Farm and Kirchmaier because the attorneys denied them their rights to discovery, committed fraud, obstructed justice, denied them their "meritorious claims," and harassed them. This argument was a continuing theme in the trial court, and plaintiffs continue to repeatedly assert it in this Court as well. With respect to the pleadings signed in accordance with MCR 2.114(D), plaintiffs fail to indicate specifically which pleadings were intended merely to harass or what information in the pleadings was not grounded in fact. It appears that plaintiffs' arguments are based on their belief that State Farm's initial erroneous indication that

Joseph Kirchmaier, rather than James Kirchmaier, was the lessee of the Saab constituted fraud. Nothing in the record, however, indicates the State Farm engaged in any fraudulent conduct. Because in the record, however, indicates that State Farm engaged in any fraudulent conduct. Because plaintiffs have not established a violation of MCR 2.114(D), sanctions were not warranted under MCR 2.114(E). In any event, the trial court dismissed plaintiffs' claims as a result of their failure to comply with the February 8, 2008, order and not because of any conduct on behalf of State Farm or Kirchmaier's attorneys. If plaintiffs had simply complied with the order, their claims would not have been dismissed. Thus, the trial court did not err by failing to sanction Kirchmaier and State Farm's attorneys.

Finally, plaintiffs argue that the trial court erred by failing to sua sponte recuse itself because of bias and prejudice. We again disagree. Because plaintiffs failed to preserve this issue for appellate review by raising it below, our review is limited to plain error affecting substantial rights. *Veltman, supra* at 690; *Kern, supra* at 336.

A party challenging a judge for bias must overcome a heavy presumption of judicial impartiality. *Cain v Dep't of Corrections,* 451 Mich 470, 497; 548 NW2d 210 (1996). A judge may be disqualified under MCR 2.003(B)(1) if the judge evinces actual bias or prejudice against a party or attorney. *Id.* at 495. A trial court's rulings almost never constitute a valid basis for disqualification "unless the judicial opinion displays a deep-seated favoritism or antagonism that would make fair judgment impossible." *Armstrong v Ypsilanti Charter Twp,* 248 Mich App 573, 597; 640 NW2d 321 (2001) (internal quotations omitted). Further, even a trial court's repeated erroneous rulings against a litigant are not a basis for disqualification. *Id.* at 597.

The record fails to establish that the trial court was biased or prejudiced against plaintiffs. The trial court was frustrated

with both plaintiffs and State Farm because of the repeated discovery problems and expressed its frustration with both parties. At the February 8, 2008, hearing, the court indicated that it was "not happy" with the manner in whidch the case was proceeding and took matters into its own hands regarding discovery. The court also declared, "this case is a mess." The court did not permit plaintiff Aslani to speak at the February 29, 2008, hearing because he was represented by counsel who spoke on his behalf. Thus, although the record evidences the trial court's frustration, it does not show that the court was biased or prejudiced against plaintiffs.

To the extent that plaintiffs argue that the trial court should have recused itself based on its rulings unfavorable to them, they likewise fail to show that the rulings evidenced a deep-seated favoritism or antagonism. Rather, the February 8, 2008, order merely required plaintiffs

and their physician to submit to discovery depositions which had previously been rescheduled several times. Both parties were subject to the 25-question interrogatory limit specified in the order. In addition, it was plaintiffs' noncompliance with the order that led to the dismissal of their claims. Thus, plaintiffs have not shown that the trial court's adverse rulings were a result of deep-seated favoritism or antagonism toward them, and the trial court's failure to sua sponte recuse itself did not constitute plain error.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Cynthia Diane Stephens

APPENDIX L

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

Case No.: 06-625234-NF
HON: [Michael J. Callahan

DAVID ASLANI and
SHEILA KNUBBE,

Plaintiffs,

vs.

KEVIN THEODORE SIMON, and
JAMES KIRCHMAIER,

Defendants.
_____/

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Joseph Kirchmaier
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(248) 358-4490
_____/

AFFIDAVIT

State of Michigan)
)ss.
County of Oakland)

MICHAEL P. DANIELS, being first duly sworn, deposes and says that he is the attorney for Defendant, **Joseph Kirchmaier**, and the above MOTION FOR

SUMMARY Disposition is true and correct to the best of his knowledge, information and belief.

BY: /s/ Michael P. Daniels
Michael P. Daniel (P35009)

Subscribed and sworn to before me this
18th day of October, 2007
/s/ Karen L [illegible]
NOTARY PUBLIC, Oakland County, MI

My Commission expires 9-17-2011.

APPENDIX M

STATE OF MICHIGAN
IN THE MICHIGAN COURT OF APPEALS
Court of Appeals Docket No. 284572
Court Case No.: 06-625234-NF

DAVID ASLANI and
SHEILA KNUBBE,

Plaintiffs-Appellants,

-vs-

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,
a foreign corporation; and
KEVIN THEODORE SIMON,
JAMES KIRCHMAIER,

Defendants-Appellees.

_____/

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_____/

APPEARANCE OF COUNSEL FOR
DEFENDANT-APPELLEE, JAMES KIRCHMAIER

Now comes the law firm of Romain, Kuck & Egerer, P.C., by Attorney Michael P.Daniels, and hereby

enters its Appearance as counsel on behalf of Defendant-Appellee James Kirchmaier, for purposes of the present Appeal by Plaintiff[s]-Appellants, David Aslani and Sheila Knubbe.

Respectfully Submitted,
ROMAIN, KUCK & EGERER, P.C.

BY: /s/ Michael P. Daniels

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Dated: April 15, 2008.